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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL GROSS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 65A04-0610-CR-570

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APPEAL FROM THE POSEY CIRCUIT COURT  
The Honorable James M. Redwine, Judge  
Cause No. 65C01-0508-FD-89

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**April 9, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Michael Gross appeals his conviction for class D felony attempted theft. We affirm.

## **Issue**

The issue is whether sufficient evidence supports Gross's attempted theft conviction.

## **Facts and Procedural History**

The facts most favorable to the verdict indicate that at 7:50 p.m. on July 30, 2005, Officer Anthony Alldredge of the Mt. Vernon Police Department was patrolling in his vehicle when he noticed a white cloud above the thousand-gallon anhydrous ammonia tanks at the Farm Bureau Co-op. Suspecting that one of the tanks was leaking, Officer Alldredge radioed Officer Michael Collins, who was patrolling in another vehicle. Officer Collins approached the tanks from the southwest and saw Gross moving northwest away from the tanks. Gross's right hand was under his shirt. Officer Collins ordered Gross to the ground. Gross pulled a blue thermos out of his shirt, placed it on the ground, and complied with Officer Collins's order. Officer Collins noticed a "strong odor" of anhydrous ammonia "in the area." Tr. at 20. Because of "the possibility of the dangers of anhydrous," Officer Collins did not approach the thermos. *Id.* at 22.

Gross was on the ground when Officer Alldredge arrived. Officer Alldredge smelled anhydrous ammonia when he "initially came around the tanks themselves." *Id.* at 13. Officer Alldredge saw the thermos and suspected that Gross was stealing anhydrous ammonia, which is used to manufacture methamphetamine. Officer Alldredge contacted Investigator Kenneth Rose of the Posey County Narcotics Unit.

Investigator Rose arrived approximately fifteen minutes after Gross was apprehended. He ordered everyone away from the thermos “because it was giving off a strong odor of anhydrous ammonia.” *Id.* at 28. He noticed that the thermos “had a frost line approximately two to three inches from the bottom up.” *Id.* According to Investigator Rose, the frost line was due to “the condensation on a container when it contains anhydrous ammonia as that is an extremely cold product once it comes into contact with any moisture or air.” *Id.* at 34. Investigator Rose put on a respirator mask and protective gloves and opened the thermos. Inside the thermos, he saw a trace amount of liquid, which he believed to be anhydrous ammonia. He later immersed the thermos in water to neutralize the ammonia, which gave off a vapor cloud, and subsequently disposed of the thermos.

Investigator Rose noticed that a protective cap had been removed from the pressure valve on top of one of the anhydrous ammonia tanks. The valve was closed. He also found a “cut up piece of bicycle inner tube” lying near one of the tires beneath the tank. *Id.* at 31. According to Investigator Rose, methamphetamine manufacturers use bicycle inner tubes to transfer anhydrous ammonia from tanks to “whatever container they would have brought to the scene.” *Id.* He later immersed the inner tube in water to neutralize any ammonia and destroyed it. Officer Alldredge photographed both the thermos and the inner tube at the scene.

On August 1, 2005, the State charged Gross with class D felony attempted theft. On June 2, 2006, a jury found Gross guilty as charged.

### **Discussion and Decision**

The State alleged that Gross committed class D felony attempted theft by knowingly or intentionally attempting “to exert unauthorized control over the property of Farm Bureau, to-wit: anhydrous ammonia; with the intent to deprive said person of any part of the use or value of the property.” Appellant’s App. at 13; *see also* Ind. Code § 35-43-4-2(a) (defining theft). Indiana Code Section 35-41-5-1(a) provides that “[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime.” On appeal, Gross contends that the State did not present sufficient evidence that he took a substantial step toward exerting unauthorized control over the anhydrous ammonia.

Our standard of review is well settled:

When reviewing a challenge to the sufficiency of the evidence, this court will neither reweigh evidence nor judge witness credibility, but instead, considering only the evidence which supports the conviction along with the reasonable inferences to be drawn therefrom, we determine whether there is substantial evidence of probative value from which a reasonable jury could have concluded that the defendant was guilty of the charged crime beyond a reasonable doubt. When a conviction is based upon circumstantial evidence, this court will not disturb the verdict if the fact-finder could reasonably infer from the evidence presented that the defendant is guilty beyond a reasonable doubt. Additionally, the circumstantial evidence need not overcome every reasonable hypothesis of innocence; the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Rolland v. State*, 851 N.E.2d 1042, 1046 (Ind. Ct. App. 2006) (citations omitted).

The circumstantial evidence most favorable to the verdict indicates that Gross removed the protective cap from one of the Farm Bureau Co-op’s anhydrous ammonia tanks, opened the valve, and used the bicycle inner tube to siphon a trace amount of anhydrous ammonia into the thermos. Gross then closed the valve, discarded the inner tube, and was

hiding the thermos under his shirt when Officer Collins saw him walking away from the tanks. This evidence is sufficient to establish that Gross took a substantial step toward exerting unauthorized control over the anhydrous ammonia.<sup>1</sup> Gross's arguments are merely invitations to reweigh the evidence in his favor, which we may not do. We therefore affirm Gross's conviction.

Affirmed.

SULLIVAN, J., and SHARPNACK, J., concur.

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<sup>1</sup> Gross claims that the State's "theory of guilt is unclear. If the thermos contained anhydrous ammonia then the theft would have been completed and not attempted." Appellant's Br. at 4. Obviously, a defendant who completes a crime takes a substantial step toward commission of the crime.